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August 18, 2010

VIA ECF

Honorable Dennis M. Cavanaugh, U.S.D.J.
UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY
Frank R. Lautenberg U.S.P.O.
Courthouse Building, Room 451
Federal Square, P.O. Box 999
Newark, NJ 07101-0999

Re: Eli Lilly and Company v. Actavis Elizabeth LLC, et al.
Civil Action No. 07-3770 (DMC) (JAD)

Dear Judge Cavanaugh:

This firm, along with Axinn, Veltrop & Harkrider LLP, represents defendant Actavis Elizabeth LLC ("Actavis") in the above-captioned action. We write on behalf of both Actavis and defendant Teva Pharmaceuticals USA, Inc. ("Teva"), with the consent of counsel for Teva, in response to Apotex Inc.'s ("Apotex") letter to the Court dated August 17, 2010, suggesting that any final judgment entered in this case only apply to those parties that participated in the trial and not to parties such as Actavis and Teva that agreed to stay their actions. (D.I. 666.) Apotex's request should be rejected.

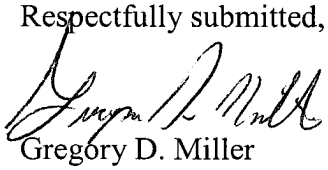
To the extent that Apotex's letter suggests that the '590 patent is invalid only as to those parties that participated in the trial, but valid as to (and enforceable against) other pending parties, it is incorrect. A patent cannot be valid as to some and invalid as to others; it is either valid or it is invalid. See Blonder-Tongue Labs., Inc. v. Univ. of Ill. Found., 402 U.S. 313, 349-50 (1971). The invalidity of the '590 patent has been established by this Court. Actavis and Teva are thus in the same position as the other defendants in this case, and judgment should be entered as to Actavis and Teva as it is for all pending parties to this litigation. Actavis and Teva therefore agree with defendant Sun Pharmaceutical Industries, Ltd. (a defendant that participated in the

trial) that judgment should not be entered on a defendant-by-defendant basis. (D.I. 665.)

Moreover, the Joint Stipulation to Stay ("Joint Stipulation") entered into between Actavis and plaintiff Eli Lilly and Company ("Lilly"), and that entered into between Teva and Lilly, do not preclude entry of judgment of invalidity of the '590 patent. The Joint Stipulations simply provide that "all of Lilly's claims against Actavis [and Teva] and Actavis's [and Teva's] defenses are stayed until a final court decision from which no appeal has been or can be taken" and that the "final appellate ruling or mandate as to infringement and the validity and enforceability of the '590 patent" will be entered as to Actavis and Teva as if they had participated in the appeal. (D.I. 567 at ¶ 2; D.I. 557 at ¶ 2.) There is no language in the Joint Stipulations that expressly prevents the entry of judgment as to Actavis and Teva, and Apotex does not point to any such express language. It is noteworthy that the proposed judgment orders submitted by both defendant Mylan Pharmaceuticals Inc. and Lilly do not exclude Actavis or any of the other parties that did not participate in the trial. (D.I. 658-7; D.I. 659-6.)

For the foregoing reasons, Actavis and Teva respectfully request that the Court reject Apotex's suggestion that any judgment entered in this action not include Actavis and Teva.

Respectfully submitted,



Gregory D. Miller

cc: Counsel of Record (via ECF)